

UNITED STATES OF AMERICA
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DECISION AND ORDER
06-CV-6417

IRA CLEMENTS, et al.,

Defendants.

On March 23, 2007, the Court entered a Judgment of Foreclosure and Sale for the property at 58 Trafalgar Street, Rochester, New York. On June 18, 2007, the U.S. Marshal docketed his Notice of Sale for that property to Charles Hain of Rochester, New York, for \$31,600.00. According to the terms of sale, Mr. Hain gave the Marshal a down payment of \$3,200.00, and agreed to pay the balance of \$31,600.00 by July 14, 2007.

As of October 24, 2007, Mr. Hain had not paid the balance and the Marshal had not extended the time for completion of the purchase. Counsel for the United States moved on October 24, 2007, to vacate the foreclosure sale to Mr. Hain, forfeit Mr. Hain's deposit, and hold a new auction for the premises. On November 20, 2007, counsel for the United States filed a supplemental affidavit indicating that Mr. Hain had tendered the balance of the amount due, but asking the Court to vacate the sale, nevertheless, since to accept the late tender would "set[] a bad precedent for future bidders at such auctions as to the relevance of the deadlines set forth in the Terms of Sale." The motion to vacate was served on Mr. Hain at the same address shown in the Terms of Sale, which Mr. Hain

signed on June 14, 2007, and, to date, he has not responded to the motion.

In view of the clear terms of the sale document, attached as Exhibit A to the Affidavit of Gerald N. Murphy, Esq. (Docket No. 21), and the need to set a precedent for future sales, the Court grants the motion (Docket No. 20) to vacate the foreclosure sale, directs forfeiture of the \$3,200.00 down payment to the United States, and directs that the U.S. Marshal schedule and hold a new auction for the mortgaged premises.

IT IS SO ORDERED.

Dated: January 16, 2008
Rochester, New York

ENTER.

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge